

Before the
FCC MAIL SECTION
Federal Communications Commission
Washington, D.C. 20554

SEP 24 2 42 PM '92

MM Docket No. 92-216

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Clearwater and Rozel,
Kansas)

RM-8068

NOTICE OF PROPOSED RULE MAKING

Adopted: August 31, 1992; Released: September 24, 1992

Comment Date: November 16, 1992

Reply Comment Date: December 1, 1992

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by Gary Violet ("petitioner") requesting the substitution of Channel 254C2 for Channel 254A at Clearwater, Kansas. Petitioner also requests modification of his construction permit (BPH-910412MD) for Channel 254A to specify operation on Channel 254C2. Petitioner submitted information in support of the proposal and expressed his intention to apply for the channel, if allotted.

2. Petitioner's proposal requests the substitution of Channel 235C1 for Channel 254C1 at Rozel, Kansas, or the reallocation of Channel 254A to Rozel to accommodate the substitution at Clearwater. Petitioner states that the construction permit for Station KGZE, Channel 254A, was modified to specify operation on Channel 254C1 in MM Docket 91-223, effective December 16, 1991, 6 FCC Rcd 6116 (1991). Petitioner further states that the permittee of Channel 254A, Lee F. Scott, has not filed an application for Channel 254C1 and that the construction permit for Channel 254A expired on June 28, 1991.

3. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Clearwater and the surrounding area with expanded service. Channel 254C2 can be allotted to Clearwater, Kansas, in compliance with the Commission's spacing requirements provided a channel substitution is made at Rozel, Kansas.¹ We shall also propose to modify the construction permit for Channel 254A, Clearwater, Kansas, to specify operation on Channel 254C2 in accordance with Section 1.420(g) of the Commission's Rules. Since the construction permit for Channel 254A was cancelled and the call sign

for Station KGZE(FM) was deleted at Rozel, Kansas, we shall propose the substitution of Channel 235C1 for Channel 254C1 at Rozel.² Channel 235C1 can be allotted to Rozel at a site 7 kilometers (4.3 miles) northwest of the community.³ The site restriction will prevent a short spacing to Station KICT-FM, Channel 236C1, Wichita, Kansas. We will open a new filing window for the channel upon termination of this proceeding if interest is expressed in retaining a channel in Rozel. However, if no interest is expressed for a channel at Rozel, we will delete Channel 254C1 without replacement, and no new allotment will be made to the community.

4. In view of the above, the Commission believes it is in the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following communities:

OPTION I

City	Present	Channel No. Proposed
Clearwater, Kansas	254A	254C2
Rozel, Kansas	254C1	235C1

OPTION II

Clearwater, Kansas	254A	254C2
Rozel, Kansas	254C1	---

5. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this Order by Certified Mail, Return Receipt Requested to the following: Lee E. Scott, Box 125, Rozel, Kansas 67574.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before November 16, 1992, and reply comments on or before December 1, 1992, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Donald E. Johnson
Blair Joyce & Silva
1825 K Street, N.W.
Washington, D.C. 20006

¹ The coordinates for Channel 254C2 at Clearwater are 37-23-31 and 97-35-55.

² The construction permit (BPH-890217MP) for Channel 254A, Station KGZE(FM), Rozel, Kansas, was cancelled on June 2,

1992.

³ The coordinates for Channel 235C1 at Rozel are 38-13-42 and 99-28-27.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.